

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JASON BARROW,

Petitioner,

vs.

ROB JEFFREYS,

Respondent.

8:24CV341

MEMORANDUM AND ORDER

This matter is before the Court on the Motion to Withdraw Habeas Petition (“Motion to Withdraw”), [Filing No. 11](#), filed on October 7, 2024, by Petitioner Jason Barrow. Petitioner filed a Petition for Writ of Habeas Corpus under [28 U.S.C. § 2254](#), [Filing No. 1](#), on September 3, 2024, and was granted leave to proceed in forma pauperis, [Filing No. 7](#). Also before the Court are Petitioner’s pending motion for copies, [Filing No. 9](#), and motion for transcripts, [Filing No. 10](#). For the reasons that follow, Petitioner’s Motion to Withdraw and motion for copies will be granted, his motion for transcripts will be denied as moot, and this matter will be dismissed without prejudice.

I. MOTION TO WITHDRAW

Petitioner asks the Court to allow him to withdraw his petition and to “re-submit his petition at a later date” because “Petitioner has a Constitutional Claim that must first be presented to the State Supreme Court in order to have exhausted State remedies before presenting it to the Federal District Court.” [Filing No. 11 at 1](#). The Court construes Petitioner’s Motion to Withdraw as a motion to dismiss pursuant to [Federal Rule of Civil Procedure 41](#).¹ [Rule 41\(a\)](#) states that a plaintiff, or in this case a petitioner, may dismiss

¹ The Federal Rules of Civil Procedure apply to habeas corpus proceedings “to the extent that the practice in those proceedings: (A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or

an action without a court order by filing “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)\(i\)](#). In addition, [Rule 41\(a\)\(2\)](#) provides that an action may be dismissed at the plaintiff’s or petitioner’s request “on terms that the court considers proper.” [Fed. R. Civ. P. 41\(a\)\(2\)](#). Here, Petitioner asks the Court to dismiss this action before the Court has conducted any review of the petition and before any response by the Respondent has been required. Upon consideration, Petitioner’s Motion to Withdraw is granted.

II. MOTION FOR COPIES

On September 20, 2024, Petitioner filed a motion, [Filing No. 9](#), requesting free copies of his petition, [Filing No. 1](#), and his memorandum in support of his petition, [Filing No. 5](#). Petitioner indicated in an earlier letter addressed to the Clerk of Court that he does not have his own copy. [Filing No. 8](#). Pursuant to [28 U.S.C. § 2250](#),

If on any application for a writ of habeas corpus an order has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of any court of the United States shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

Petitioner is proceeding in forma pauperis here, and, upon consideration, the Court concludes Petitioner has demonstrated a need for the copy of his petition and memorandum which he requests given his limited financial resources to pay for his own copies. See [Filing No. 4](#); [Cassidy v. United States](#), 304 F. Supp. 864, 867–68 (E.D. Mo. 1969), *aff’d*, 428 F.2d 585 (8th Cir. 1970) (“The matter of granting a motion to produce copies of documents under section 2250, and if granted, what copies are to be furnished,

the Rules Governing Section 2255 Cases; and (B) has previously conformed to the practice in civil actions.” [Fed. R. Civ. P. 81\(a\)\(4\)](#).

is within the discretion of the court. Congress did not intend that documents should be furnished without a showing of need.”). Accordingly, the Court will grant Petitioner’s motion and direct the Clerk to provide Petitioner with a copy of his habeas petition, [Filing No. 1](#), and memorandum, [Filing No. 5](#).

III. MOTION FOR TRANSCRIPTS

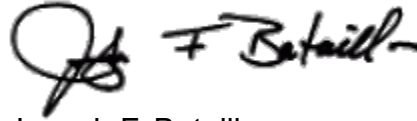
Also on September 20, 2024, Petitioner filed a motion asking the Court to require Respondent to “transcribe all non-transcribed portions of the guilty plea proceeding, presentence report, pre-trial proceeding[,] and the sentencing proceeding in his case and furnish them to the Court pursuant to 28 U.S.C.A. 2254 Rule 5(c).” [Filing No. 10](#). As this matter is being dismissed at Petitioner’s request, his motion for transcripts is denied as moot.

IT IS THEREFORE ORDERED that:

1. Petitioner’s Motion to Withdraw Habeas Petition, [Filing No. 11](#), is granted. This matter is dismissed without prejudice at Petitioner’s request. No certificate of appealability will be issued.
2. A separate judgment will be entered.
3. Petitioner’s motion for copies, [Filing No. 9](#), is granted. The Clerk of Court is directed to send to Petitioner a copy of his petition, [Filing No. 1](#), and his memorandum, [Filing No. 5](#).
4. Petitioner’s motion for transcripts, [Filing No. 10](#), is denied as moot.

Dated this 16th day of October, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "JF Bataillon". The signature is stylized with a large, circular initial "J" and a long, horizontal stroke extending to the right.

Joseph F. Bataillon
Senior United States District Judge